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CHARLES ELMORE CROPLEY

Supreme Court of the United States.

October Term, 1938.

No. 11, Original.

The State of Texas,

Complainant,

v.

The State of Florida et als.,

Respondents.

BRIEF FOR THE RESPONDENT COMMONWEALTH OF MASSACHUSETTS.

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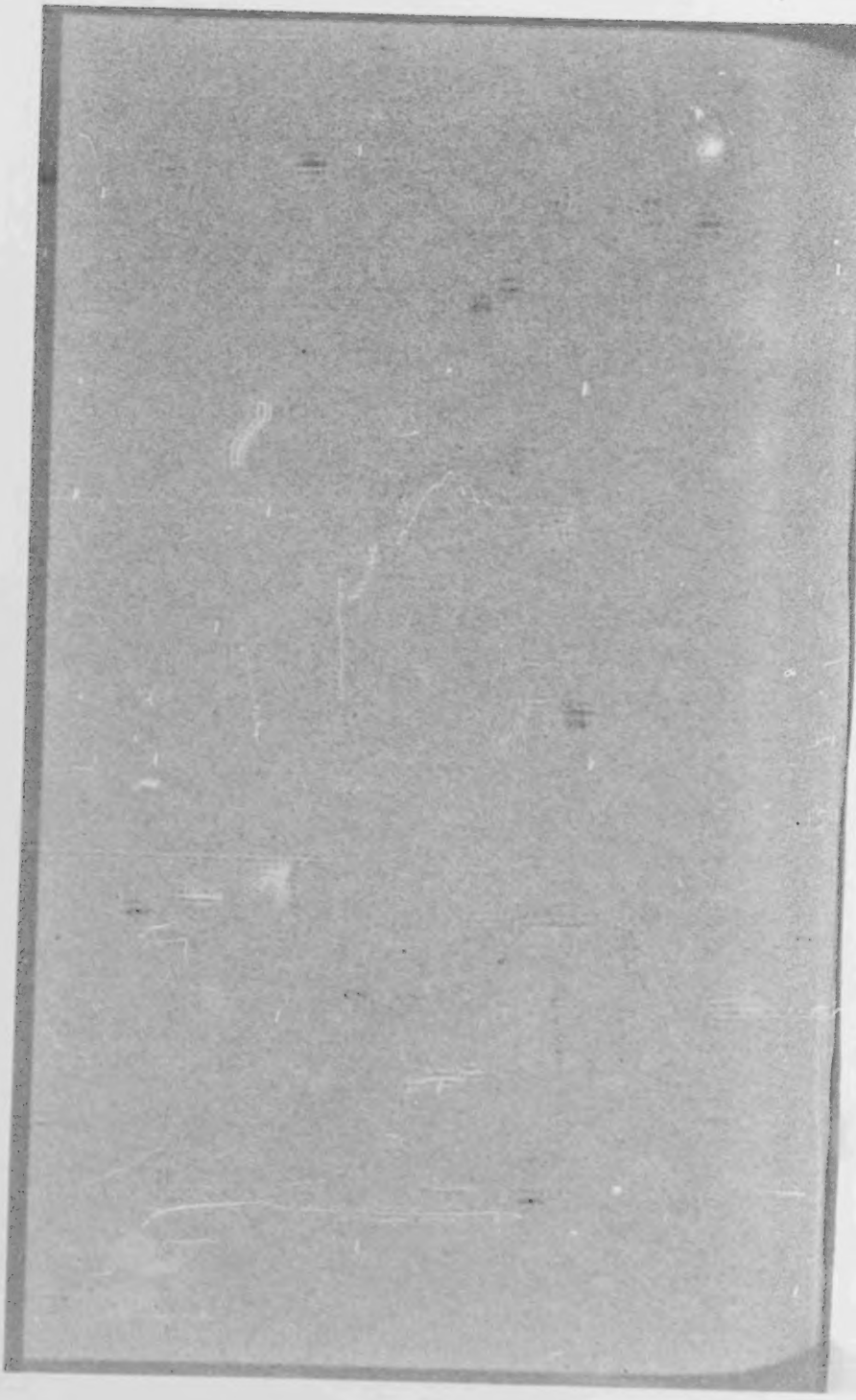

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OCTOBER TERM, 1938.

No. 11, ORIGINAL.

THE STATE OF TEXAS, *Complainant*,

v.

THE STATE OF FLORIDA ET AL., *Respondents*.

BRIEF FOR THE RESPONDENT COMMONWEALTH OF MASSACHUSETTS.

THE CASE.

This is an original bill of complaint by the State of Texas against the States of Florida, Massachusetts and New York and Hetty Sylvia Ann Howland Green Wilks, surviving sister, and sole inheritor of the estate, of the late Edward Howland Robinson Green, who died June 8, 1936, leaving a gross estate of $40,144,229.73 (R. 1, 11).

The bill alleges (R. 1-4), and the Special Master finds (R. 10-15), that each State claims to be the State of Green's domicile at the time of his death so that it is entitled to collect from his estate a succession tax, and that if each respondent State proceeds to enforce its claim, as in the absence of this proceeding it intends to do (R. 13, 14), there will not be sufficient assets to pay the complainant's claim. The sovereign parties respondent, by way of cross-bill and counter-claim against one another, severally assert similar claims (R. 4).

The Master has found that the value of Green's net estate is insufficient by the amount of $1,589,877.79 to satisfy the tax claims of the United States and the four sovereign parties (R. 14, 15), and that the cause was instituted and prosecuted by the State of Texas solely in its own behalf (R. 15).

The prayers of the bill and of the answers of the sovereign parties respondent by way of cross-bill and counter-claim, and also of the answer of the respondent Wilks, are for an adjudication upon the single issue:

In which of the States was Edward Howland Robinson Green domiciled at the date of his death on June 8, 1936? (R. 4, 5).

The Court appointed the Honorable John S. Flannery of Washington, D.C., Special Master, and directed him to make findings of fact and conclusions of law and submit them to this Court together with his recommendations for a decree, said "findings, conclusions and recommendations . . . subject to consideration, revision or approval by the Court" (R. 5).

The Master has filed his report in which he finds and rules that Green's domicile at the date of his death in fact and in law was in the Commonwealth of Massachusetts, and recommends a final decree so adjudicating (R. 57).

The respondents Commonwealth of Massachusetts and Hetty Sylvia Ann Howland Green Wilks have filed no exceptions to the report. Massachusetts here seeks to sustain its adequacy and correctness.

The States of Texas, New York and Florida have each filed exceptions.

Each said State excepts to the Master's ultimate conclusion that Massachusetts was the state of domicile.

Texas claims that the Master erred in finding that Green's domicile of choice in Texas, acquired in 1892, was ever abandoned.

New York claims that the Master erred in failing to find that Green acquired a domicile in New York when he went there from Texas in 1911, which domicile persisted until Green's death.

Florida claims that the Master erred in failing to find that Green acquired a domicile in Florida in 1927 or thereafter superseding his earlier domicile, wherever it was.

WHILE THE MASTER'S FINDINGS ARE ADVISORY, THEY ARE PRESUMPTIVELY CORRECT AND WILL BE REVERSED ONLY IF ERROR HAS BEEN COMMITTED.

The Master's inferential findings and conclusions are, of course, under the order of reference, subject to the revision of the Court (R. 5). But where the Master has seen and heard the witnesses, his report will be treated as presumptively correct and will be revised only if the Court is satisfied that error has been committed.

> ". . . In dealing with these exceptions, the conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part. . . ." Gray, J., in *Tilghman* v. *Proctor*, 125 U.S. 136, 149.
>
> ". . . In practice it is not usual for the court to reject the report of a master, with his findings upon the matter referred to him, unless exceptions are taken to them and brought to its attention, and, upon examination, the findings are found unsupported or defective in

some essential particular. . . ." Field, J., in *Kimberly v. Arms*, 129 U.S. 512, 524.

Accord:

Callaghan v. *Myers*, 128 U.S. 617, 666.
Boesch v. *Gräff*, 133 U.S. 697, 705.
Camden v. *Stuart*, 144 U.S. 104, 118.
Girard Life Ins. Co. v. *Cooper*, 162 U.S. 529, 538.

Cf. Federal Rules of Civil Procedure, No. 61½, 28 U.S.C.A. following sec. 723c.

In the present case the Master saw and heard the witnesses. He was able to determine whether and to what extent testimony was influenced by bias. The report indicates that the Master did not attach weight to some of the testimony. For example, the reiterated statements of Florida witnesses that Green upon leaving Miami for Massachusetts said he was leaving on his "vacation" were either disbelieved by the Master, or taken as mere affabilities of Green's, as indicated by the finding that "everything he did indicated a seasonal vacation" in Florida (R. 47).

Similarly the Master was in the best position to determine the weight to be given to Green's own statements, both oral and written. There was an enormous amount of testimony bearing upon Green's character, eccentricities, desire to say things to please (D. 14, 385) and habit of jollying. As Texas counsel say in their Brief, "Many 'tall tales' crept into the record" (Texas Brief, 17). The Master was in the best position to know what to believe. For example, he finds that Green, while "facetiously calling himself a 'cracker'" (R. 47) and referring to Florida as "God's country," "did not attempt to make it his own" (R. 55).

Domicile: Problem Presented: Brief Statement of the Facts.

en, born in 1868, of New England parentage and back-
d—his mother Hetty Green, a native of New Bedford
), Massachusetts—lived from 1892 to 1911 in Terrell
ter in Dallas, Texas (R. 24), having been sent there
mother (R. 23), engaged in the management of his
r's railroad (R. 23) and in various business, political
ientific pursuits (R. 25-6).

911, responding to the call of his mother, aged and in
health (R. 28), he sold his Texas home (R. 24) and
t all his household goods, and Miss Harlow whom he
arried, to New York, where he lived with her in a
owned by his family (R. 28), and assisted his mother
management of her fortune until her death in 1916
).

is mother's death, inheritor of a vast fortune, he
a palatial yacht (R. 28-9), married in Illinois (R.
d built and furnished a costly monumental home on
stral seashore property called Round Hills, in South
uth, Massachusetts, adjacent to New Bedford, begun
and first occupied in July, 1921 (R. 35-51), to which
ght all his household goods (R. 33); in the meantime
ed a furnished hotel apartment in New York (R.
thereafter and until 1924 divided his time princi-
tween the two places, spending more time in Massa-
however than in New York (chart, end of Brief).
was not engaged in business in New York. The
ment of the Green fortune consisted principally in
money on call, mortgage securities, and the invest-
d re-investment in tax-exempt bonds (R. 31). He
ent four or five hours a week at the office prior
other's death (R. 31), and after October, 1921, when
e arthritis in his one leg made it difficult for him
out, he never went to his office and kept in touch

with it only by visits from its manager and by correspondence (R. 31). Green was principally interested in scientific experimentation, and his pursuits therein he carried on exclusively at Round Hills in Massachusetts (R. 40, 41), where he constructed and operated a radio broadcasting station and aviation field, and where he conducted alone and with the Massachusetts Institute of Technology various investigations and experimentations in radio communication with airplanes, long-distance photography, television, moving pictures, fog dissipation and aviation (R. 19, 39-41).

In 1923 he spent the winter in Florida on account of his health (R. 54), and later purchased and remodelled a clubhouse on Star Island, Miami Beach (R. 43, 44-54), into a far less costly home than Round Hills (R. 42, 46), and furnished it, to which he took none of his household goods (R. 45), and after its first occupancy in 1927 (R. 44) he divided his time principally between his Massachusetts and Florida homes (R. 44-55), with his New York hotel suite, held under a mere tenancy at will, as a place of brief sojourn *en route* between them (R. 33, 54).

As between Round Hills and Star Island, Round Hills was the earlier, as well as the principal, predominant and permanent home; it contained his *lares et penates,* was the center of most of his interests and activities, represented an investment of $7,000,000 against $1,500,000, and over a period of years he spent five and one-half months a year there as against four and one-half at Star Island (R. 56).

From the time he left Texas in 1911, throughout the last twenty-five years, Green, although having no place of abode whatever in Texas (R. 25), escaped all State taxation upon income and intangible personalty (R. 21) by claiming legal residence and paying a poll tax in Texas, where there was no income tax law and no enforcement against him of the tax on personalty (R. 52). He wrote his attorney that he had no sentiment where his legal residence should be (R. 53).

He died at Lake Placid, New York, June 8, 1936 (R. 27), whence his remains were brought to South Dartmouth for funeral services (R. 42). Burial was in Bellows Falls, Vermont, in the family lot (R. 19).

Upon these and supporting facts, the Master found and ruled that Green's domicile at the date of his death was in Massachusetts.

Plan of Brief.

Our present task is to assist the Court in arriving at a determination whether or not it should adopt the Master's findings or whether error has been committed therein.

1. We shall first present our factual argument (Brief, *infra*, pp. 8-41), for the purpose of showing that the Master's inferential findings of fact are sound and supported by the record.

2. We shall then present our argument upon the law (Brief, *infra*, pp. 42-50), for the purpose of showing that the Master's conclusion of Massachusetts domicile is sound in law.

We have also lodged with the Clerk an appendix, which contains two parts, (1) a statement of the facts supporting the Massachusetts findings with references to the supporting evidence. If the Court feels it incumbent upon itself to test the Master's conclusions by an examination of the proofs this statement is designed to facilitate such inquiry. (2) A reprint of the Master's findings of fact with the passages which are excepted to italicized and commented on. We believe that this will enable the Court to see at a glance the extent to which the report is unchallenged and the invalidity and insignificance of the exceptions.*

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*Abbreviations employed:
R. Master's Report;
D. Master's Digest of the evidence;
Ev. Evidence as contained in the stenographer's transcript;
Ex. Exhibit;
Exc. Exception.

Factual Argument.

The fundamental proposition which Massachusetts seeks to establish, and succeeded in establishing in the mind of the Master, is that Green established his home, and thereby acquired a domicile, in Massachusetts in July, 1921, which continued until his death in June, 1936.

We shall submit that Green's domicile was in Massachusetts because his permanent and principal home was there; that his domicile was not in Texas, in spite of his declarations, because he had no home there and no intention ever to return there to make a home; and it was not in New York or Florida because his residences in those States were, if homes at all as that word is used in the law fixing domicile, subordinate to his principal home in Massachusetts.

In considering Green's life prior to his coming to Massachusetts we shall only refer to those features of it which throw light upon and give meaning and significance to the later period.

As was said in *Attorney General* v. *Yule & Mercantile Bank of India* (1931), 145 Law Times, 9, at page 13:

> "In my opinion Rowlatt, J. was right in his view that the earlier period of Sir David's life cannot be estimated in a compartment separate from his later years, and that the later years must be regarded as throwing light upon the earlier."

1. Green went to Texas at his mother's direction and in her employment. He was financially dependent upon her and under her domination while there.

While Texas was a domicile of choice in the legal sense, as distinguished from a domicile of origin, it was not in fact the domicile of Green's own choice, but of his mother's.

Mrs. Hetty Green sent her son in his early twenties to Chicago to superintend her real estate in that city. After he had been there several years the Texas Midland Railroad, a short intrastate line in Texas, defaulted on its bonds, which were owned by Mrs. Green, and she sent Green in 1892, at the age of twenty-four, to Texas to manage the railroad (R. 23).

Green became president, manager and director of the road, taking up his residence in Terrell, where the headquarters of the road were situated (R. 23, 24). The Master has found that "While in Texas he was largely dependent upon his mother for support" (R. 21). The extent of this dependence and his subordination to his mother's command are evidenced by numerous episodes. We cite two:

In 1893 Green wrote his mother the following letter:

"Dear Mama

I am 25 years old to day I think you might send me money so I could go the Fair at Chicago. in about two weeks befor the fall rush comes. It would only cost about 200 $^{0}/_{100}$ dollars. I can get Passes to Chicago and return let me know as soon as you can so I can get redy I want to see the Fair so bad. please let me go

Your Affect son

Ned" (Mass. Ex. 67, Ev. 5845, D. 268).

In 1906, when Green was thirty-eight years old, he was nominated for Governor by the Republican State Convention at Houston. He declined the nomination and so notified the Convention, upon instructions from his mother that he must not accept any political nomination (D. 19), and he received at that time the following letter from his mother:

"My dear son—The compliment your great and adopted state has tendered to you, I know you will not

forget your Mother who needs & demands your assistance part of the year. In haste loving your Mother Hetty H. R. Green Bellows Falls Aug. 27th/06" (Tex. Ex. 3, Ev. 466, D. 19).

2. Green left Texas for New York in 1911 at his mother's request to assist her in the management of her property in New York.

Beginning at least as early as June, 1909, Mrs. Hetty Green frequently wrote her son telling of her loneliness and her need of his companionship and assistance, the burden of "so much care for an old lady" (Tex. Ex. 312, Ev. 2439), and expressing her "wish we could sell the road" (Tex. Ex. 307, Ev. 2431), again saying: "sell . . . railroad if we can" (Tex. Ex. 314, Ev. 2442, Tex. Exs. 306-315, Ev. 2428-43).

In 1910 Green went to New York with his secretary Walter Marshall and spent several months with his mother. He then returned to Texas, and after putting his affairs in order wrote her:

"Nov 24 1910-

My dear Mama.

I am getting over the rush here and will be ready to come north when ever you need me. * * * I can come up any time you need me, I am getting my health back. dont be afread to send for me when ever you neet me I can come. With love and kisses. NED." (Mass. Ex. 3, Ev. 119).

In the following July, 1911, he left Texas and went to New York.

3. When Green left Texas in 1911 he started to attempt to dispose of the Texas Midland Railroad, which was failing financially, and continued his attempts until it was sold in 1927, after which he made but one visit to Texas, which was at a sanitarium in 1935.

The Texas Midland Railroad was never a financial success (R. 23); it earned only 3½ per cent on its invested capital, which was one-half of 1 per cent short of meeting the interest on its bonds (McKay, Ev. 784-5), and from 1910, when competition from parallel motor bus transportation began, the business steadily declined, until in 1915 the road had lost 40 per cent of its traffic (McKay, Ev. 628, 629, 594, 595, D. 25). Mrs. Hetty Green was already urging Green to sell the road if he could (Brief, *supra*, p. 10), and when Green left Texas in 1911 he gave instructions to his associates to see if they could sell it. In 1915 the actual attempt to dispose of it began (McKay, Ev. 628-31, D. 27; 635, D. 27; 749-51, D. 33), which terminated in its sale in 1927 (McKay, Ev. 632-3, D. 27), after which Green made but one visit to Texas, when, in failing health, he was taken to a sanitarium in Marlin in 1935 (Wells, Ev. 100-1, D. 6).

4. Green's chief interests in Texas were in scientific experimentation. These interests were suspended by force of circumstances in New York, but found full expression at the Round Hills estate in Massachusetts, and nowhere else.

One important feature of Green's Texas life lends strong support to Massachusetts, as against New York or Florida, domicile. In Texas, Green early developed a keen and active interest in scientific experimentation, more particularly in the pioneer stages of inventions (R. 25-6).

These interests as Green developed them are not properly described as mere "hobbies," but represented an earnest desire on Green's part to acquire knowledge on those sub-

jects (Wells, Ev. 104). The Master summarizes these activities as follows:

> "Aside from his railroad activities, Green engaged in farming of an experimental nature upon his farm of 200 acres * * * he experimented for the control of the boll weevil * * *, with cottonseed meal for human consumption; with the use of the round bale for cotton; with the terracing and conservation of land against wind and water erosion; with the use of lignite deposits for fuel * * *. He developed thirteen acres of greenhouses and was one of the first rosarians in Texas, and also engaged in the poultry and pecan culture. He brought the first automobile to Texas and developed autoracing; became interested in aeronautics and organized an aviation meet at Dallas; was active in the formation of the Texas State Fair at Dallas; placed an order for the first airplane to be brought to the Fair; * * * He had the first motion picture machine in Terrell * * *" (R. 25, 26).

In Massachusetts, as we shall develop later (Brief, *infra*, pp. 24-26; and see Master's Report, 40), Green gave full expression to his interest in such matters. It is fair to say that Green's main interest in Texas, suspended by force of circumstances in New York, found full expression at his Round Hills estate in Massachusetts and nowhere else.

5. Green preferred association with common ordinary folk rather than polite society. This companionship he found in Texas, while he took an intense dislike for New York people and society. In Massachusetts he opened his grounds to the public and enjoyed watching the people and mingling with them.

In Texas Green exhibited a marked preference for associating with the "man in the street" and for society *en*

masse rather than for polite society and social functions (R. 20). While he joined clubs, societies and organizations wherever he dwelt, he rarely or never attended them (R. 20). His manner of domestic life itself prevented his intimate association with people who respected the conventions. He loved to hobnob with his railroad employees and farmers (Marshall, Ev. 5631-4; McDonald, Ev. 484-6, 500-1; Wells, Ev. 112-14; Donn, Ev. 8204, R. 20, 27).

When he came to New York and became a member of the Union Club and other exclusive organizations and was brought into contact with New York business and professional men, he was unhappy. He "didn't fit." As the Master has found, "He had no close personal friends or associates in New York" (R. 31), and again, "he had no close friends in that city and did not like the life or the people" (R. 54). On the other hand, at South Dartmouth he revelled in his contacts with the "common people." Disdaining the society of the "ice cream pants," as he derisively called his aristocratic neighbors at Salters Point and Nonquitt (Marshall, Ev. 5632), he always kept his estate open to the public, and attracted thousands to it by giving free radio concerts, allowing free access to the whaling vessel "Charles W. Morgan," and permitting the public use of his beaches (R. 39).

6. Green, after going to New York, remained in his mother's employment and under her domination until her death in July, 1916. He was indifferent to business, disliked New York people, and gave no indication of an intent to remain resident there after his mother's death. He lacked the intent to establish his home there.

Green went to New York, as he went to Texas, not from his own choice, but his mother's, and he remained under his mother's domination while in New York even more

closely than he had while in Texas. That his mode of life was dictated by his mother rather than by his own choice is indicated by his own speedy abandonment of it as soon as he became his own master.

It is New York's contention that Green became domiciled there in 1911 and never abandoned that domicile. It is essential to New York's claim to prove this, for after his mother's death in 1916, Green's interest in New York affairs as well as his personal presence in New York constantly diminished to the vanishing point (see diagram at end of Brief).

Massachusetts regards it as unessential to its case to determine the question whether Green became domiciled in New York or not, because the acquisition of the Massachusetts domicile worked the abandonment of his former domicile whether it was in Texas or New York (Brief, *infra*, pp. 43-48).

The Master dealt with the question of Green's intent with reference to making a home in New York as follows:

"After 1911 Green *no longer had a place of residence in Texas* (R. 51). . . . His intention to return to Texas might be presumed while he was temporarily residing in New York . . . if he had done nothing inconsistent with the intention to return. After his mother's death in 1916, his marriage in 1917, and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and re-established himself in an actual permanent home there," but instead of doing that, almost immediately after his marriage, he went to Round Hills, Massachusetts, and proceeded to erect a home there (R. 51). "Thus," says the Master, "we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts" (R. 52).

There were, to be sure, many indications of a definite and permanent quitting of Texas in 1911. The sale of

Green's only Texas home (R. 24), the removal of his household goods and automobiles to New York (R. 25), the disposal of the Green Floral Company (D. 6) which was the only business which he owned and managed in Texas, the initiation of negotiations to sell the railroad, the taking up of residence in New York with Miss Mabel Harlow (R. 28), the bringing there of his private secretary Walter Marshall whose family accompanied him (R. 28), the assumption of directorates in several New York financial institutions (R. 30-1), the joining of several social clubs (R. 31), all point to an intention not to return to Texas to live.

On the other hand, Green continued to vote in Terrell until 1920 (R. 26), took an active part in Texas politics (D. 20), was a Colonel on Governor Colquitt's staff for two successive terms from 1911 to 1915 (R. 26), continued to hold directorates in banks at Dallas and Terrell (D. 204), maintained for three years a colorable place of abode at Mrs. Jarvis' home in Terrell so as to have a nominal residence to permit him to vote there (R. 25), all of which tended to indicate a desire to retain his old Texas citizenship and residence. And there was testimony of an old Texas friend, that, on one occasion when he met Green in New York in 1913, Green said, "If it were not for my mother's business I would not stay in this place, because up here it is dog eat dog; I would like to go back to Texas where a man is a man whether he has a dollar or not; I hope some day to go back there to live" (D. 372, Ev. 8839). Green's state of mind may well have been accurately expressed in his letter of January 23, 1912, to his Dallas attorney, declining to put additional money into certain enterprises "as I have left Texas, *probably* for good" (Mass. Ex. 40, Ev. 4931).

Green's roots never struck deep into New York soil. He resided in an old brown stone four-story house at No. 5 West 90th Street (R. 28-9), in a declining neighborhood

(R. 32). His mother used a similar house, No. 7, next door for her office, and Green assisted her there (R. 28). Both houses were owned by the estate of Green's grandfather Robinson (R. 31-2), and their employment for purposes of Green's residence and his mother's office was obviously due to his mother's desire for economy. Mrs. Hetty Green herself was not resident in New York, but in Bellows Falls, Vermont (*Matter of H. H. R. Green*, 99 Misc. 582; 164 N.Y.S. 1063; affirmed, 179 App. Div. 890; 165 N.Y.S. 1088) (Tex. Ex. 288, Ev. 2326, D. 66). Green usually spent from one-half to three-quarters of an hour at his mother's office, sometimes returning later in the day (D. 124), and a somewhat longer time at the Seaboard Bank (R. 30). After his mother's death he devoted even less time to business. He was not at his own office more than four or five hours a week altogether (D. 405), and was never there after October, 1921 (R. 31). He then centered all his activities at Round Hills (Brief, *infra*, pp. 24-29).

Upon these facts, with much supporting evidence, the Master was fully justified in his conclusion that Green did not intend to establish a home in New York and that therefore the Texas domicile persisted until the establishment of the Massachusetts home in 1921.

I Beale, Conflict of Laws, pp. 148-9.

New York in its Brief emphasizes that domicile once acquired is presumed to continue until it is shown to have been changed, and that where a change is alleged the burden of proving it rests upon the person making the allegation (N.Y. Brief, pp. 24-27).

Mitchell v. *United States*, 21 Wall. 350, 353.
Desmare v. *United States*, 93 U.S. 605, 610.

The burden, therefore, was upon New York to convince the Master that Green intended to make his home there, and New York failed to sustain that burden.

7. Green, while maintaining a hotel suite in New York on a month-to-month tenancy, came to treat it as a place of mere temporary sojourn, and after 1933 never visited it.

We have seen that the Master found that Green did not become domiciled in New York prior to the acquisition of his Massachusetts home (Brief, *supra*, pp. 13-16; R. 52, 54). The adoption of that finding by the Court would settle New York's claim without more, as no claim has been made that a New York domicile was acquired after that date.

If, however, the Court should reverse the Master's finding on this point, then it becomes incumbent on Massachusetts to show that Round Hills became Green's principal home, while New York became either a subordinate home or no home at all. The Master has found the essential facts in favor of Massachusetts on this issue. His crucial findings are:

> "He had no close friends in that City and did not like the life or the people. After 1921, he was unable to go to theatres or baseball games as theretofore and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. He removed all of the furnishings of his former residence, 5 West Ninetieth Street and all of the early associations with his mother, except a few of her letters, to South Dartmouth. * * * He never went to his office, 111 Broadway, after 1921 and carefully refrained from visiting the City during the last years of his life because of pending litigation. At the time of his death, his apartment in the Sherry-Netherland was under a temporary lease [a tenancy at will, Mass. Ex. 50, D. 169; Mass. Exs. 51-2, D. 169)] and for many years had been occupied by him for brief periods in the Spring and Fall while en route from Massachusetts and Florida" (R. 54).

"During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South and at the time of his death, contained over 100 of his mother's letters, a portion of his stamp collection, his interest in which had been slight since 1927, some clothing of Mrs. Green and a few personal belongings worth less than $1,000" (R. 33).

The evidence clearly supports the Master's conclusion.

When Green first occupied Round Hills in 1921 he made mid-weekly trips to New York. From 1922 on his stays at Round Hills in the latter approximate half of the year were uninterrupted by such absences; the rest of the year Green divided between New York, Florida and the Buie Sanitarium at Marlin, Texas, through 1927. From 1928 he omitted the visit to Texas, spending the early part of the year at Star Island. From that time he merely stopped off at the New York apartment *en route* between Round Hills and Star Island (see diagram at end of brief).

Green's mental attitude accorded with the fact just stated, as appears from numerous expressions in his correspondence. He wrote in 1931 that his New York apartment was "only temporary and is used only for a short time between my summers in Massachusetts and winters in Florida" (Mass. Ex. 313, Ev. 5331-3). In 1930 he wrote: "My visits to New York are rather infrequent of late and of short duration" (Mass. Ex. 279, Ev. 5317). And there was reliable testimony of similar oral statements (J. O. Green, Ev. 3026, D. 118; Lincoln Brown, Jr., Ev. 8389, D. 356; Cleary, Ev. 9478-9, D. 395; Newington, Ev. 2766-7, D. 91; see also Strandell, Ev. 9687-9, D. 405).

The Master has found without exception by New York:

"After his illness in November, 1921, all of his activities in New York ceased; the last bank directors'

meeting he attended was October 20th, 1921, and he never went to his office, 111 Broadway, after that date and kept in touch with it by visits from Potter or by correspondence.

"Green never entertained socially in New York but occasionally gave theater parties to some of his young protegées. Until 1921, he went to baseball games in the afternoon and to the theater in the evening. After 1921, his evenings were spent in his apartment playing games, listening to the radio and working on his stamp collection. He had no close personal friends or associates in New York. The confinement resulting from this indoor life bored him and made him unhappy" (R. 31).

New York in its brief has been unable to point to any evidence indicating activities and interests of Green in New York in the last ten years of his life.

If, therefore, New York at any time had been Green's home, it had ceased to be so long before his death. It had not merely sunk into the position of a subordinate home, but had ceased to be a home in any sense and had become a place of mere temporary sojourn (Brief, *infra*, pp. 46-7).

8. After Green had become independent of his mother's domination by her death, had inherited a vast fortune, and was married, he established his marital domicile at Round Hills, South Dartmouth, Massachusetts.

Upon the death of Mrs. Hetty Green in July, 1916, Green for the first time was emancipated from her control and influence and came into his fortune (R. 51). Within a month he moved the office from 7 West 90th Street, where his mother had maintained it, to 111 Broadway (N.Y. Ex. 1; Ev. 378). He bought a Great Lakes steamer, brought it to the Atlantic seaboard, had it cut in two, lengthened and

converted into the largest private yacht in the world (Marshall, Ev. 5353-4, D. 241). In July, 1917, he married Miss Mabel Harlow at Highland Park, Illinois (N.Y. Ex. 2; Ev. 380, R. 29). The Master finds:

> "In the month following his marriage, he and Mrs. Green sailed to Buzzards Bay and anchored off Round Hills Farm, a property which Green and his sister had inherited from their mother. As a boy he had spent two summers there with his mother and sister. It was a seacoast property of approximately 130 acres, located at South Dartmouth, Massachusetts, about eight miles from New Bedford, which had been in the ownership of his Howland ancestors for over 200 years—from the time of the original Indian grants—and was regarded by Green as an ancestral estate. The only structures then on the property were the old Howland homestead and some outbuildings. On this first visit in August, 1917, he determined to develop the property into a great country estate and build there a monumental home * * * From 1918 to 1921, the development of this property was his principal occupation" (R. 35).

He immediately started development of the property, began actual building of the mansion in June, 1919, when Mrs. Green turned the first spadeful of earth, and occupied it in July, 1921 (R. 35). To this house he transferred the furnishings of the house he had lived in in New York at 5 West 90th Street (R. 33).

The Master has described this property and Green's development of it (R. 36), the purchase of 140 additional acres (R. 36), the house itself (R. 37, and picture, R. 59), the collection therein of all his family possessions and heirlooms including the oil portraits of his mother (R. 37, 38), the staffing of the house with thirty servants and the grounds

with some fifty more (R. 38), and the concentration of Green's activities and interests at Round Hills (R. 39).

The total cost of the Round Hills house and its furnishings was approximately $785,000, of the Round Hills farm $616,000, and between 1917 and 1936 Green expended on the Round Hills estate on both capital and maintenance accounts $6,688,000, an amount vastly in excess of such expenditures elsewhere (R. 42).

9. Green did not found his home at Round Hills for purposes of his health. He was strong, robust and energetic at the time. Later as his health declined he persisted in remaining there usually into December despite the advice of his doctors.

As domicile is not commonly changed by presence in a place merely for one's health, it may be of importance that Green did not go to Round Hills for his health.

The Master has found that it was in August, 1917, that Green determined to develop the Round Hills property "into a great country estate and build there a monumental home" (R. 35). Construction began in June, 1919 (R. 35), and the house was occupied in July, 1921 (R. 35). These events fell within the period of which the Master says: "This period from 1911 to 1921 was the most active of Green's business career" (R. 29), and that "he was strong, robust and energetic until November 1921" (R. 20).

We emphasize this because there are statements in the report which tend to confuse.

The Master divides Green's life into three domiciliary periods: (1) early manhood in Texas, 1892-1911; (2) business career in New York, 1911-1921; (3) period of decline and pursuit of health from 1921-1936; and he describes this third period as the "twilight years when he was unable to

pursue the outdoor existence he loved * * * when he found himself in possession of an enormous fortune, which he *began to spend freely in the erection of beautiful homes at South Dartmouth* and Star Island * * *" (R. 22). This must not be taken as referring to the erection of the Round Hills mansion, which was already complete and occupied.

On page 35 the Master again refers to this "third and closing period of Green's life" and follows with a narration of the events of the earlier period. We take no exception to anything that is said, but say merely by way of caution that the arrangement on first reading might convey an erroneous impression that Green established himself at Round Hills in the later period.

In point of fact, after Green's arthritic condition became serious, and to an even greater degree after his cardiac condition developed in September, 1932, the fog and dampness at Round Hills was bad for his health, notwithstanding which he insisted on staying there usually into the middle of December, telling Professor Bowles that he was going to continue to go there and if he was going to die there, that was that, "because he wanted to be there" (Ev. 6846-7, D. 324). The places where Green went for his health were Dr. Buie's Sanitarium at Marlin, Texas (Ev. 836-8, D. 36); Florida (Ev. 4169, D. 167); Asheville, North Carolina (Ev. 4167-8, D. 167); and Lake Placid, New York (Ev. 4176-7), while he insisted on staying late at Round Hills against his doctor's advice (Ev. 4177, D. 167; Ev. 7034, D. 329).

10. After Green's occupancy of Round Hills in July, 1921, he spent more time there than in any other dwelling place.

In 1921, when the Round Hills house was first occupied, Green spent three and one-half months there from July 1st to October 15th, when he went on his regular fall trip to

Texas. The house remained open and completely staffed, but Green's acute illness in Dallas in October, 1921, and his subsequent course of treatment in New York, made his return to Round Hills that year impossible.

From 1922 throughout the remainder of his life Green spent approximately five and one-half months of every year at Round Hills, except in four years when illness required him to go to New York City for medical attention (November 15, 1923) or to Asheville, North Carolina (November 5, 1930), Lake Placid, New York (October 24, 1932), or Florida (November 25, 1935), for the sake of his health (Ev. 4145, D. 165; Ev. 4168, D. 167; Ev. 4176-7, D. 167). In the other ten of these fourteen years he arrived at least as early as July 1st and remained into December (R. 43, and diagram at end of Brief).

This time did not diminish in his closing years, except in 1930, when he left in November to go to Asheville, North Carolina, and in 1932, when he left in November to go to Lake Placid, New York, both at his doctor's insistence.

11. Green's desire to avoid taxation in Massachusetts was responsible for his not arriving before July 1st and of his not extending his stay beyond six months in any year.

In Massachusetts there has been in force since 1917 a personal income tax at very high rates upon income from investments. The statute provided from that time until it was amended in 1929 that every person who was "an inhabitant of the Commonwealth at any time between the first day of January and the thirtieth day of June, both inclusive in any year" should make a return and pay the tax. The provisions of this statute were called to Green's attention by his attorney in January, 1919 (Mass. Ex. 71, Ev. 5100, 5102, D. 215). Thereafter and until 1934 Green did not go into Massachusetts before July 1st in any year

(Ev. 4963-4, D. 207; Mass. Ex. 18, Ev. 818-20), habitually arriving early in the morning of that day, and did not stay there after the 18th of December in any year (Mass. Ex. 18, Ev. 818-20, R. 42). He explained on many occasions that he adopted this practice in order to avoid liability for Massachusetts taxes (Ev. 5364-5, D. 242; Ev. 5709-10, D. 260; Ev. 5765-6, D. 263; Ev. 4989-90, D. 209). The Massachusetts statute was amended in 1929, eliminating the words "between the first day of January and the thirtieth day of June, both inclusive," and Green's attorneys so advised him (Mass. Ex. 287, Ev. 5175). Thereafter in both 1934 and 1935 Green went to Massachusetts in June, but did not remain there for as much as six months in either year (Mass. Ex. 18, Ev. 818-20). He stated on numerous occasions that he could not stay in Massachusetts as much as six months in any year, on account of Massachusetts taxes (citations *supra*).

12. Round Hills became the center of Green's horticultural and scientific activities.

We have already seen that Green had developed little or no interest in business or finance (Brief, *supra*, p. 16) and that his serious interests were in the direction of scientific experimentation, particularly with the early stages of new inventions (Brief, *supra*, pp. 11-12).

From October, 1921, his arthritic condition made it difficult for him to get about, so that business was not only distasteful but painful to pursue. This physical disability in moving around made Round Hills all the more important to him. There he was able to supervise and watch all the activities for which the place was so unique. "He used a small electric hand-operated car by which he propelled himself around the grounds and later bought a small closed electric car with heating equipment which could be used in cold weather. This car was fitted with appliances for his col-

lections, books and papers and enabled him to be outdoors in all kinds of weather, to give attention to the various activities there" (R. 39, and picture, R. 63).

Green practically relinquished all attention to business and devoted himself entirely to the pursuit of his principal interests at Round Hills.

The Master finds he "gave some attention to farming and horticulture as in Texas, had a dairy, raised goats, poultry, etc., and employed about forty farm hands, half of whom stayed all the year round. His farm supplied the house with vegetables and his greenhouse furnished flowers" (R. 39).

He maintained a photographic laboratory (R. 40).

In 1922, having become interested in radio, he constructed two broadcasting stations and enlarged them in 1925 so that programs could be sent from his station, WMAF, called "The Voice From Way Down East," throughout New England and even to Europe. At the end of 1927, when broadcasting became commonplace, he lost his interest in this phase of radio and devoted his attention to it as a means of communication, etc. (R. 40).

The Master has found, without exception:

> "In 1927, his interest became centered in aviation and the use of radio in connection with navigation by air and sea. He placed a number of his buildings and his radio facilities at the disposal of the Massachusetts Institute of Technology, for experimental purposes, in connection with radio communication between the ground and air, direction finding, transmission of radio beams for the guidance of aviators, and in connection with this project he began the same year the construction of a fully equipped airport, with facilities for landing hydroplanes as well as airplanes, obtained licenses to dredge and fill in sections of the waterfront, and con-

structed a hangar and runway for airplanes. In connection with the Massachusetts Institute of Technology, he arranged with the Goodyear Tire & Rubber Company to supply a blimp for research work and built a blimp dock. This airport was rated A1 by the United States Government and no landing charge was made. He employed a superintendent and established a school for aviators. In 1929, purchased a flying boat for his wife called the "Miami Maid" which he kept at Round Hills. He studied the subject and could discuss aeronautics intelligently with mechanics upon his daily visits to the airport which was maintained in good condition until his death.

"The Round Hills Research Division of the Massachusetts Institute of Technology started in 1925 and continued until his death. It began with a study of radio as aid to navigation and studies were made of the penetration and dissipation of fog as an aid to air navigation. In 1931, experiments were begun with high voltage generators for the 'smashing' of atoms, etc. Green took a personal interest in these experiments and it was his custom to make daily visits to the workshop and laboratory. In the relief work during the Vermont flood in November, 1927, and in connection with the sinking of the 'Vestris' November, 1929, and signalling to the Graf Zeppelin on her maiden voyage, as well as during the Byrd Antarctic Expedition of 1926-7, this station demonstrated its practical usefulness. Some part of this experimental work was carried on in collaboration with the United States Government. These various facilities cost Green upwards of $1,250,000 between 1925 and 1933, in addition to the money gifts made to the Institute of Technology. Pecuniary donations were discontinued after 1933 but he continued to supply the facilities" (R. 40, 41).

13. Green displayed great interest in the history of Round Hills and New Bedford and its whaling industry, in which his ancestors had figured, which interest he manifested in the enshrining of the whale-ship "Charles W. Morgan," the collection of books, pictures and antiquities dealing with the whaling industry and with Gosnold's voyage to New England touching at Round Hills in 1602.

Green displayed vital interest in the history and antiquities associated with New Bedford and its whaling industry, in which his forebears had prominently figured, and in the traditions of Round Hills, which had belonged to his family for many generations.

The Master has found without exception:

"Early in his development of Round Hills, Green began to assemble books, antiquities, etc., connected with the whaling industry in which his forebears had prominently engaged. In 1924 he tried to purchase the 'Charles W. Morgan', an old whaling ship which had belonged to his ancestors at one time and finally arranged to have it transferred to Whaling Enshrined, Inc., to which corporation he transferred a part of his shoreland for a concrete berth and dock. Until his death he donated $10,000 [annually] to the maintenance of the ship and her crew of a Captain and nine sailors. He collected flags which had been used as signals by the New Bedford Fleet and on anniversaries had them displayed. This ship was kept open to the public without charge and about 125,000 people visited it yearly. In connection with the 'Morgan', it was originally his intention to construct a whaling village and museum but this project, while started, was never completed.

"Many volumes in his library relating to whaling and maritime industry and Gosnold's Voyage to New England in 1602 were of great rarity. Green had expert ad-

vice and gave much personal attention to the collection of these books and to histories relating to the genealogy of the Howlands and the early history of New England, New Bedford and South Dartmouth. In his application for membership in the Massachusetts Society of the Sons of the Revolution and the Society of Colonial Wars, he claimed lineal descent from Massachusetts and Rhode Island ancestors. He also had a tablet in memory of his mother placed in the room of the Massachusetts Historical Genealogical Society" (R. 41).

Green never exhibited any interests similar to these in any part of the country other than in Massachusetts.

14. Green identified himself with Round Hills.

As the foregoing activities indicate, Green thoroughly identified himself with Round Hills and its traditions. In a pamphlet issued in 1925 describing "The Voice From Way Down East" he speaks of himself as a descendant of the John Howland to whom the Round Hills tract had originally been allotted (R. 40). At the dedication of the "Morgan" in 1926 he made the dedicatory address, saying, "Our old friend has returned to us, where he will remain for the balance of his time on earth, in our home at Round Hills. Charles W. Morgan, I welcome you home!" (Mass. Ex. 470, Ev. 9736). In 1927, on an anniversary of the town of Dartmouth, he sent a telegram extending his hearty congratulations to Dartmouth and its citizens and welcoming "the people who are perpetuating and continuing the memory of our good old town" (Mass. Ex. 222, Ev. 5296-7, D. 237). He wrote a friend that "Ever since the Pilgrims my address has been as follows: E. H. R. Green, Round Hills Farm, South Dartmouth, Massachusetts" (Mass. Ex. 148, Ev. 5279-80, D. 235). In a letter from the Buie Sanitarium in Texas he wrote to a friend, "* * * I shall start trying to

migrate back to the 'Land of the Pilgrim Fathers' " (Mass. Ex. 205, Ev. 6080-2, D. 280). He employed a local historian and genealogist to write monographs upon different subjects connected with Round Hills, including Gosnold's visit there in 1602, the history of Round Hills farm and its occupants, and the history of the Colonial windmill reconstructed upon the estate (Ev. 6384-7, D. 299).

15. The arguments advanced by the other States against Round Hills as home are without weight.

Several matters are advanced by the other States in their briefs which they claim tend to indicate that Round Hills was not Green's home. We shall consider them here.

1. It is said that the Round Hills house was intended as a monument to his mother and was made so that it could be converted into an institution, and therefore it could not have been intended as a home. This argument the Master has completely answered:

> "As Green and his sister were the last of their line, Green had a plan, which was never matured, to have the house become a memorial of some kind to the Green and Howland families. The house was designed and constructed so that it might be converted into an institution but was designated on the plans, equipped and furnished as a spacious residence, with every household convenience, and was used as such from the time he moved into it until his death" (R. 36).
>
> "But the monumental character of Round Hills does not detract from its serviceability as a residence and it was occupied as such from the time of its completion until Green's death" (R. 56).

New York in its Brief says that the evidence left it uncertain whether the conversion into an institution was to

be during Green's lifetime or afterwards (N.Y. Brief, pp. 58, 59, 62), saying, at page 63:

> "The evidence is to some extent conflicting as to whether Green intended to turn the Round Hills house into an institution during his lifetime or after his death."

This statement is made without any citation of evidence to substantiate it, and we take sharp exception to it. The uncontradicted evidence was to the effect that it might be converted into an institution after his death (Ev. 5710-12, D. 261; 5777-80, D. 264; Ev. 6441, 6447, D. 302; Ev. 6683-4, D. 314; Ev. 6739, D. 317) and discloses no formulation of any definite plans whatever to carry out this intention (Ev. 7837-8, D. 203).

Florida in support of this argument states that "The architect told Mr. Howes, the building contractor, that it was the intention of the owner to use the building for an institution for the public *after he had lived in it for a while*" (Fla. Brief, p. 51; citing D. 175, Ev. 4364). Reference to the transcript discloses that this testimony was struck out as hearsay (Ev. 4364).

2. It is said that Round Hills could not be a home for the reason that the grounds were open to the public.

We have already shown that Green liked to mingle with people, enjoyed having them on his grounds and actually did everything possible to bring them there, by radio broadcasts, throwing open his beaches and giving free admittance to the whaleship "Charles W. Morgan" (Brief, *supra*, p. 13). It must be remembered that after November, 1921, Green himself was unable to get about and mingle with the people elsewhere, and he compensated for this inability by bringing them to him.

The argument that this lack of privacy at Round Hills militates against its being regarded as Green's home fails

signally to take into account the essential character of the man.

An acute observation was made by Mayor Ashley of New Bedford, who testified that Green—

> "said he was getting his money's worth being out and watching them and seeing them and them seeing him. It reminded me of a rich boy that could not play out with the gang and he was looking through a hole in the fence and wanted to get out, and he took this way of bringing them there so he could see them" (Ev. 6460).

3. It is said that the facts that Green's sister had a one-half interest in the one hundred thirty acres which they inherited from their mother and that she continued to pay half the taxes thereon shows that he did not intend it for a home. The answer to this is obvious. Green had no children and no prospect of children. He had a wife, but had cut her off from any share in his estate by an antenuptial agreement. He had made a will under which his sister was the sole beneficiary (Mass. Exs. 58, 56; Ev. 3412, 3382, D. 142). He and his sister were on cordial terms, and it was regarded as desirable not to divide the property inherited from their mother. Under these circumstances, it would have been foolish for Green to take a deed of his sister's undivided half only to devise it to her by will. It was all to Green's advantage that his sister paid half the taxes.

4. It is said that Green's refusal to have his name carved on the house indicates that he did not regard it as home. Having in mind the future destination of the property and the fact that it was intended in the nature of a memorial to his mother, it would have been inappropriate to have his initials placed upon it. But this in no way detracts from

his intention to occupy the house as his home so long as he lived.

5. It is said that Round Hills was situated between two summer colonies, Nonquitt and Salters Point, which are customarily occupied during the summer season, and that Green "spent only the summer season at Round Hills" (N.Y. Brief, p. 66). The fact is, of course, that Green arrived at Round Hills every year as early as July 1st and stayed until late in November or December, except on a few occasions when illness required him to leave earlier (see diagram at end of Brief). The New England summer does not run into the middle of December.

The short answer to New York's argument is that if this was a summer home, by the same token New York was a winter home, and that Green occupied his winter home for a much shorter period than he did his summer home, eventually substituted Star Island in Florida for New York as his winter home, and used New York only as a temporary place of sojourn on his way North and South (see diagram at end of Brief, and R. 33).

So far as Green's summer neighbors at Salters Point and Nonquitt were concerned, he had very little to do with them except to annoy them with his airport and his radio broadcasts and by the public attendance at his beach (Ev. 5632-4, D. 256).

Green chose his associates from the all-year-round people in Dartmouth and New Bedford, and enjoyed popularity with the masses to whom he generously made available the use of his estate (Ev. 5631-2, D. 256; Ev. 4810-13, D. 195).

6. It is said that Green had no sentimental attachment for Round Hills because he let the old Howland house fall into disrepair and used the family graveyard for burying his dog (N.Y. Brief, p. 65). While Green did not keep the house in repair, it was not the home of his parents or immediate family, and had no real value as an antique. As for

the alleged irreverence to his ancestors in permitting his dog to be buried in the graveyard there, this fails to take account of Green's extraordinary affection for his dogs (Fla. Ex. 110, Ev. 8239, D. 351; Tex. Ex. 14, Ev. 887, D. 41). He had his portrait painted with his dog. And the Greens had peculiar notions as to what might properly be buried in their family graveyard. Green's amputated leg was interred in his father's lot in the churchyard at Bellows Falls (Mass. Ex. 169, D. 255).

16. Green began to go to Florida for his health in 1923 and later purchased and reconstructed a club-house on Star Island into a dwelling place which he first occupied in 1927, and thereafter went there for the winter and early spring months, his presence and activities in Massachusetts being undiminished by these sojourns in Florida. Round Hills remained Green's principal home.

Green went to Florida beginning March, 1923 (Mass. Ex. 8), on account of his health, particularly his rheumatic ondition (Mass. Ex. 129, D. 235; Ev. 5276; Ev. 4169, D. 67); and continued in subsequent years to go there for his ealth. He wrote in 1924 that his house boat was "inended on account of my health to be used in southern lorida during the months of January, February and arch" (Mass. Ex. 146, Ev. 6026, D. 276), and in 1926 he eclined an appointment in New York "on account of a rolonged stay in Florida due to ill health" (Tex. Ex. 301, v. 2418).

In 1924 he was there nearly four months, cruising in his use boat, and on the day before his departure purchased small lot of land on an artificial island called "Star and," with a dock to which he could tie up his house boat v. 4997-5000, D. 209). In 1925 he spent about the same riod and bought two additional lots adjacent to the one

purchased in 1924, the whole comprising three acres, on the central lot of which was a club-house which he started to reconstruct into a dwelling house (Ev. 5054-5), living in the meantime on his house boat (Ev. 5056); in 1926 he spent about three months living on his house boat, the Star Island house not yet being ready for occupancy (Ev. 5056-7); in 1927 he spent about three months, for the first time occupying the house (Ev. 5057, D. 213). In 1928 and the following years he spent between four and five months annually in the Star Island house.

Green took no personal and active interest in the remodeling or construction of the Star Island house; was never present during the construction and never conferred with the contractors, in contrast with the vital and constant interest which he took in the construction of Round Hills and its development (Ev. 8063-5, 8096-7, D. 345-6; R. 46).

Green never removed from Round Hills to Star Island any of the household furnishings, library and pictures and personal belongings, which continued to remain at Round Hills until his death (Ev. 5599, D. 253).

While the Star Island house was furnished with costly new furniture, it never contained any keepsakes of his days in Texas, or of his mother, except a small cabinet photograph, or other distinctively personal articles; the *lares et penates* all remained at Round Hills (R. 56).

Green never undertook at Star Island or elsewhere in Florida any scientific experimentation; this was continued solely at Round Hills (R. 47).

Green never accumulated any library in Florida and never manifested any interest in books, historical, geographical or otherwise, dealing with Florida (R. 45, 47, Ev. 5597-9, D. 253).

Green invested nearly $7,000,000 at Round Hills as compared with $1,500,000 at Star Island (R. 56).

17. Green's activities and interests in Round Hills were not diminished, but on the contrary increased after the acquisition of his house at Star Island.

The years during which Colonel Green acquired and developed his Star Island property were not years of diminishing activities at Round Hills, but, on the contrary, were years when he was engaged in great construction projects and increased activities, which continued to about 1933, when a noticeable decline in his health curbed his activities everywhere and prevented his going about and living the active life which he had in former years (Brief, *infra*, p. 36).

It was in 1927, the year he first occupied the Star Island home, that Green began to construct at Round Hills a fully equipped airport with facilities for hydro-aeroplanes as well as land-planes. He obtained a license in 1927 to dredge in Buzzards Bay and to fill solid the tidal tributaries on his property, so as to obtain a dry, level field. In 1928 and 1929 he was principally engaged in this dredging and filling. In 1929 he constructed an airplane hangar and runway for airplanes, and a launchway extending 210 feet into the bay for seaplanes, and continued his work of filling and grading (R. 40).

In 1929 he built a blimp dock. Green himself went up in a blimp in 1930. In 1931 Green gave a reception on the field to Russell Boardman and John Polando. On one occasion he had an airplane meet in the blimp dock for children, at which he gave prizes (Mass. Ex. 437, Ev. 7018, D. 326).

It was during this period that Green was most actively interested in the experiments of the M. I. T. Unit. In 1931 experiments were begun with a high-voltage generator for the disintegration of the atom (R. 40).

Until the fall of 1932 it was his custom to drive into the workshops and watch the experiments being conducted, and after his illness that fall he continued to consult with the professor in charge of the unit. Green continued to

preside at the annual meetings of the Round Hills Radio Corporation and presented reports as to the progress of the work through 1935 (Mass. Ex. 437, Ev. 7019-24).

He added to his Round Hills domain by the purchase of a four-acre tract on August 15, 1927 (Ev. 6363-5, D. 297).

18. Green's interests in Round Hills survived to the end although his activities were curtailed or discontinued everywhere from illness in the last three years. Florida's contention to the contrary is unsound.

Florida claims that Green's domicile was shifted to Star Island because in the later years his interest and activities at Star Island increased and those in Round Hills declined. Florida does not state when they claim this occurred (Fla. Brief, p. 30). We have just seen that it did not occur before 1932 (Brief, *supra*, pp. 35, 36). After 1932 there was a decline of activities in both places due to illness.

In September, 1932, while Green was at Round Hills, he was stricken with a serious heart affliction which required him to seek relief in the higher altitude of Lake Placid, New York (Pascal, Ev. 4151, 4155). From that time on he was in a very weakened and constantly failing condition (Roche, Ev. 7352, D. 107; Pascal, Ev. 4155-8, D. 166; Buie, Ev. 856-886, D. 38-41). In 1935 when he went to the sanitarium at Marlin, he had become so emaciated that he was spared the humiliation of seeing his friends (Ev. 271), his weight shrank from three hundred to one hundred sixty-six pounds (Ev. 8888, D. 376). In 1936 at Star Island he was at times in an oxygen tent (Ev. 7353). Any decline of activities in this period, whether at Round Hills or Star Island, would certainly not be indicative of a loss of interest in either place.

The Master has found that while Green's activities at Round Hills were necessarily curtailed by his illness, his interest survived (R. 43). The evidence supports this finding.

It is significant that Green actually spent among the longest periods of his life at Round Hills in these years. In 1933 he was there from July 1st to December 10th, in 1934 from June 20th to December 16th, and in 1935 from June 18th to November 23d. If, as Florida argues, Green had lost all interest in Round Hills and wanted to be only at Star Island, there was nothing which would have prevented it in this period.

Florida's bald assertion (Fla. Brief, p. 34) that from 1928 to June 8, 1936, Green spent more time in Florida than in Massachusetts results from the fact that Florida takes a period of eight and one-half years, and the final half year Green spent in Florida and died before going to Massachusetts. If we take the period year by year, the preponderance of time is in favor of Massachusetts (see diagram at end of this Brief).

The fact that Green installed in the Round Hills House in 1935 a complete new oil heating system (Ev. 6902, D. 327, R. 37) surely indicates that he was keeping the house comfortable for continued occupation into the cold months as usual.

A vivid intimate portrait of Green's life at Round Hills in these later years was given by his Massachusetts protegée, Eileen Stephenson, who was very close to him in that period (Ev. 6305-6330, D. 294-6).

It is true that from 1934 Green could no longer enter the laboratories at Round Hills to watch the activities of the Technology unit, but he did continue to permit them the use of his facilities throughout his life, and manifested an undiminished interest in the reports that were brought to him of their activities (Bowles, Ev. 6830-5, D. 321-3).

The airport was kept in A1 condition until Green's death (Ev. 6889-91, D. 325). Even Vander, upon whose testimony Florida relies to show a lack of interest (Fla. Brief, p. 31), conceded that Green's interest in the airport survived until 1934 (Vander, Ev. 7118-19).

As to the farm, in which Florida claims that Green lost interest because he did not replace two horses that died in 1934 and two more in 1935, saying that he was planning to motorize the place (Ev. 7094, D. 340), the farm superintendent whose testimony is relied on indicated that the farm was kept up in every department, vegetables, hay, cattle, land, greenhouse, 150 acres of land in working order, vegetables taken to the mansion, some thirty or forty goats maintained, which increased rather than decreased in number; eight cattle whose milk was used for the house, and some forty men employed on the farm throughout the summer, and twenty-two in the winter (Tulloch, 7094-5, D. 340).

Florida's claim that Green's abandonment of radio broadcasting in 1927 indicated a loss of interest in Round Hills is not well taken. As the Master correctly found, "At the end of 1927, when broadcasting became commonplace, he lost his interest *in this phase* of radio and devoted his attention to it as a means of communication, etc." (R. 40).

Florida's statement that his golf course was abandoned is also without significance. The testimony was that Green had a few holes with flags in them, but the golf course was never developed (Bullard, Ev. 7034). It was necessarily given up when he made use of the ground for the airport in 1929. Far from indicating an abandonment of Round Hills, it indicated an intention to put it to a use which meant very much more to Green than a golf course which he could not play on.

Florida claims that Green's interest in and contributions "to charitable organizations" in Massachusetts declined,

but that in Florida his interest in and contributions "to religious and charitable organizations" continued. To support this exception they list contributions to those limited classes of philanthropic organizations. The classification which they use overlooks the bulk of Green's philanthropic contributions during the period. The total philanthropic contributions made by Green to all organizations in Massachusetts after 1928 was $100,305 (D. 144), and to all philanthropic organizations in Florida $18,343 (D. 146-7). These Massachusetts contributions of $100,305 do not include contributions of $99,661.18 made to Whaling Enshrined or over $750,000 to Round Hills Radio Corporation after 1928 (D. 148).

Green's resignation from the Wamsutta Club as a gesture of protest over the expulsion of a friend (Ev. 5633-4, D. 256), and his resignation from the New Bedford Country Club in the same year can hardly be taken as evidence of loss of interest in Round Hills as a home, particularly since he never went to any of the clubs he joined anywhere (R. 20, Ev. 5449-50, D. 247, and Ev. 5634).

If we turn from the consideration of Green's activities at Round Hills to those at Star Island after 1932, we find a like situation. Of course there was not the same cessation from activities because Green never had any activities there as he did at Round Hills. But if we may consider his boats as a recreational activity, we find that they were no longer in use. In 1934 he sold the show-boat "The Colonel," which was formerly tied at his dock, where it was used for entertainment. His three other boats, a speed boat, a tug boat and a gondola, after 1932 were left in storage except when removed for reconditioning (Ev. 8649-52, D. 365-6), and from 1929 Green was rarely if ever on any of them (Ev. 5610, D. 255; Mass. Ex. 265, Ev. 5608, D. 254). Mayor Sewell of Miami, who appears to have been as close to Green as any one in Miami, said that "the last

couple of years that he lived, I do not think but very few people seen him. We would hear from him but he was a sick man" (Sewall, Ev. 8294-5); and beginning in 1931, as Green's health failed, Sewell saw him less frequently (Ev. 8294-5).

We have searched the record and Florida's Brief in vain for any evidence of activities on Green's part in Miami after 1932, except the usual routine which he followed in both Miami and Round Hills of working on his stamp and numismatic collections, riding in his automobile, passing the time of day with the shopkeepers and sitting still.

Although in common with Florida's thousands of winter visitors Green enjoyed the warm sunshine, he never gave up Round Hills as his permanent, real and principal home, where his roots were so deeply embedded in a soil to which his New England heritage made him indigenous. The Master correctly found that Round Hills "was not only the earlier home but * * * it was the principal, predominant and permanent home" (R. 56).

Green was on his way to Round Hills when he died. In April, 1936, Star Island house was closed, and when Green left for Lake Placid in the hope of regaining his health, the staff of servants were sent to Round Hills to prepare for his homecoming (D. 330). On June 8th he died and on the 10th his funeral services were held at his home at Round Hills.

19. Conclusion.

As stated in the Restatement of the Law of Conflict of Laws (quoted in Brief, *infra*, p. 43), it is "the intimacy of the relation" between a person and a place which distinguishes a home from a dwelling.

The intimacy of Green's relation to Round Hills, taken in conjunction with the fact that he there surrounded him-

self with the mementos of the life of his ancestors who had continuously for over two centuries resided at Dartmouth and New Bedford, indicated that the things which he cherished at Round Hills truly constituted, figuratively speaking, his household gods. For the last fifteen years of his life his *lares* and *penates* continuously remained at Round Hills. There was the true center of his affairs. The things he had there, and the things he did there reflected the real things which interested him. Round Hills became, and remained until his death, the headquarters of those interests and activities of Green which to him were most important. There was his principal habitation, his one real home, and his domicile at the time of his death.

Discussion of Law.

What we shall undertake to establish is briefly this:

Domicile as applicable to domicile of choice is at the place of a man's home. If he has more than one home, it is at the principal home. Principality of home is not dependent on order of acquisition, except where the homes are of equal degree. When a man establishes such a home *animo et facto*, that is his domicile irrespective of his desire that it should be elsewhere.

1. Domicile as Home.

The American Law Institute defines domicile as follows:

> "Domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law."
>
> Am. Law Inst., Conflict of Laws, sec. 9.

The identity of domicile with home is remarked by Professor Beale, who says:

> "The term 'domicil' is derived from the Latin word meaning home, and the fundamental significance of home may be said to have fixed the fundamental meaning of domicil: 'By domicil we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.'"
>
> I Beale on Conflict of Laws, p. 94, sec. 9.5, quoting from Cranworth, L.C., in *Whicker* v. *Hume*, 7 H.L.C. 124, 159-160.

2. Domicile as Principal Home.

Where a person has a home, and only one home, his domicile is there.

If, however, a person has a plurality of habitations, his domicile attaches to the one which is his principal establishment or headquarters.

This Court in *Williamson* v. *Osenton*, 232 U.S. 619, 625, speaking through Mr. Justice Holmes, has laid down the principle:

> "The very meaning of domicil is the technically *preeminent headquarters* that every person is compelled to have in order that certain rights and duties that have attached to it by the law may be determined."

And this accords with the classic statement of Judge Story:

> "that is properly the domicile of a person where he has his true, fixed, permanent home and *principal establishment*, * * *"

Story, Conflict of Laws (8th ed.), pp. 40, 41.

The phrase "principal establishment" employed in Judge Story's definition expresses the same thought, if indeed it is not synonymous with the phrase "preeminent headquarters" employed by Mr. Justice Holmes in *Williamson* v. *Osenton, supra*, and with the phrase, "principal home," which is adopted by the American Law Institute, and by Professor Beale.

The American Law Institute incorporates the idea in its definition of home, saying:

> "A home is a dwelling place of a person, distinguished from other dwelling-places of that person by the intimacy of the relation between the person and the place."

Am. Law Inst., Conflict of Laws, sec. 13.

"Domicile of choice is a conclusion or inferen which the law derives from the fact of a man fixi voluntarily his *sole or chief residence* in a particul place, with an intention of continuing to reside the for an unlimited time."

Lord Westbury in *Udny* v. *Udny*, L.R. H. of L (Scotch) 441 (1869).

Accord:

Thayer v. *Boston*, 124 Mass. 132, 135-140.
Am. Law Inst., Restatement of the Law of Con flict of Laws, secs. 15 (4), 24;
I Beale, Conflict of Laws, secs. 24.1 to 24.4.

In dealing with plurality of habitations, two methods of expression have been employed. It may be said that one of the habitations is a home and the others mere dwelling places. This was the method employed by the New York Court in *Matter of Harkness*, 183 App. Div. 396; 170 N.Y. Supp. 1024. Or it may be said that one of the habitations is the principal home and the others mere subordinate or secondary homes. This is the method employed by the American Law Institute in its Restatement of the Law of Conflicts, secs. 13, 15, 24. This is, however, a matter of terminology.

3. Principality of Home Not Dependent upon Priority of Acquisition.

The concept of domicile as the principal home or "pre-eminent headquarters" carries with it the corollary that a residence which has become subordinate or secondary will not persist as the domicile. If it did, there would be no occasion to talk about principal home, because the first in order of occupation would always prevail.

It is only when the homes are of equal degree that the earlier in point of time is the legal domicile.

> "When a person who has capacity to acquire a domicil of choice has more than one home, his domicil is in the earlier home, unless he regards the second home as his principal home."
>
> Am. Law Inst., Conflict of Laws, p. 48, sec. 24.

> "Where there are two actual and equal homes, the earlier in point of time is the legal domicil."
>
> I Beale on Conflict of Laws, p. 191, sec. 24.3.

> "Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home', would point out that to be his domicil."
>
> Phillimore's Law of Domicil, p. 18.

The question, then, as between two or more homes is not priority but principality, and because this is so the inquiry must be directed to the point whether fact and intent concur to make a later home the principal one, rather than to whether the former home has been abandoned. *Ex hypothesi* the earlier home is not completely abandoned; it is merely abandoned as principal home.

This has been explicitly recognized in the more recent cases.

> "Sometimes the animus is treated as involving two separate intentions, one to abandon the old location, and one to abide in the new. *If the last intention be*

formed, it necessarily includes the other. * * *"* (Italics the Court's.)

Ford v. *Peck,* 116 Kan. 74, at 76.

"It is argued by appellees that before a new domicile of choice can be acquired there must be proof of the abandonment of the old. In our opinion this contention is unsound, for the intention to make one's home in a new place necessarily includes the abandonment of the former home."

Dorrance's Estate, 309 Pa. 151, at 172.

"The intention which is significant in effecting a change of domicile is the intention to acquire a new home rather than an intention with reference to an old home."

Atwood v. *Atwood,* Mass. Ad. Sh. (1937) 763, 766; 8 N.E. (2d) 916, 918.

And see:

Feehan v. *Tax Commissioner,* 237 Mass. 169, at p. 171.

Thayer v. *Boston,* 124 Mass. 132, at p. 137, extract from charge approved on appeal by the Supreme Judicial Court.

Shaw, C.J., in *Abington* v. *North Bridgewater,* 23 Pick. (Mass.) 170, at p. 178.

Matter of Harkness, 183 App. Div. 396, 398; 170 N.Y.S. 1024.

Commissioner ex rel Fortney v. *Bobrofskie,* 329 Pa. 44.

"It is not necessarily true, however, that a man who maintains two well-equipped places of residence

has two actual homes; for he may regard one as rather a convenient temporary stopping place than as a home"

I Beale on Conflict of Laws, p. 187, sec. 24.2.

The Master's finding that Green's New York apartment for many years prior to his death was occupied by him for brief periods in the spring and fall while en route from Massachusetts and Florida (R. 54) and during the last ten years was used as a mere "temporary sojourning place" on his trips North and South (R. 33) brings New York within the situation described.

Upon these findings it is really not necessary to consider, as between New York and Massachusetts, which of two homes was the principal one, for the Master has found that the New York apartment had become a place of mere temporary sojourn. We are aware of no cases which would sustain New York as the domicile upon these findings.

The fact that Massachusetts was what New York calls a "summer home" does not militate against its being the predominant and principal home.

Where a man has seasonal homes, the one which is his principal home becomes the place of domicile.

"* * * if a married man has two places of residence at different times of the year, that will be esteemed his domicil which he himself selects, or describes, or deems to be his home, or which appears to be the centre of his affairs * * *"

Story on Conflict of Laws (8th ed.), p. 52, sec. 47.

"There is no evidence of any intention to remain in Boston beyond the winter months. On the contrary, the intention to return to the testator's country seat in the spring, ought to be inferred from the uninterrupted

practice for five years before." [Holding the country seat to be the domicile.]

Parker, C.J., in *Harvard College* v. *Gore*, 5 Pick. (Mass.) 370, 375.
Somerville v. *Somerville*, 5 Ves. 750, 788-790.
McHenry v. *State*, 119 Miss. 289.
I Beale on Conflict of Laws, p. 189, sec. 24.2.

4. Domicile is Where a Person Chooses to Make his Home, Not Where he Chooses to Make his Domicile.

It is of course implicit in the concept of domicile which we have been considering that a person chooses where his home or principal establishment is to be, upon which the law fixes upon that place as his domicile. A man cannot elect to make his home in one place for the general purposes of life and in another for the purpose of taxation. It is this element of our definition which becomes operative in considering Texas' claim.

The rule has been frequently stated:

"* * * When you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not."

Dickinson v. *Brookline*, 181 Mass. 195, 196 (opinion by Holmes, C.J.).

"* * * a man cannot retain a domicil in one place when he has moved to another and intends to reside there for the rest of his life, by any wish, declaration or intent inconsistent with the dominant facts of where he actually lives and what he actually means to do."

National City Bank v. *Hotchkiss*, 231 U.S. 50, 56; citing, with approval, *Dickinson* v. *Brookline*, *supra*.

"* * * a man cannot elect to make his home in one place for the general purposes of life, and in another place for the purposes of taxation."

Feehan v. *Tax Commissioner*, 237 Mass. 169, 171.

"* * * a man's home is where he makes it, not where he would like to have it."

Kerby v. *Charlestown*, 78 N.H. 301, 307.

"The intention required for the acquisition of a domicil of choice is an intention to make a home in fact, and not an intention to acquire a domicil."

Am. Law Inst., Conflict of Laws, sec. 19.

Accord:

Dicey, Conflict of Laws (5th ed.), p. 91.
VI Halsbury, Laws of England (2d ed.), p. 202.
I Beale, Conflict of Laws, p. 150, sec. 19.2.
Matter of Trowbridge, 266 N.Y. 283.
Rosenberg v. *Commissioner of Internal Revenue*, 37 Fed. (2d) 808.

APPLICATION OF LEGAL PRINCIPLES TO THE FACTS.

The principles which we have just discussed are determinative of the claims of the several States:

1. Massachusetts prevails as the State of Green's domicile because it was Green's "principal, predominant and permanent home" (R. 56).

2. Texas fails because Green abandoned his Texas home (R. 52), and made his home in Massachusetts, claiming a residence in Texas only for purposes of taxation (R. 52).

3. New York fails because Green lacked the intent "to settle down in a home" there (Beale, Conflict of Laws, vol. I, page 148), but even if the intent had originally existed, New York eventually ceased to be a home and became a mere place of temporary sojourn (R. 33).

4. Florida fails because Massachusetts became and remained the "earlier, predominant and principal home" while Florida, if a home at all, was a later and subordinate home (R. 57).

The Master's Report and recommendation for a decree adjudicating Green's domicile in Massachusetts at the time of his death on June 8, 1936, should be adopted.

Respectfully submitted,

For the Commonwealth of Massachusetts,

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Assistant Attorney General.

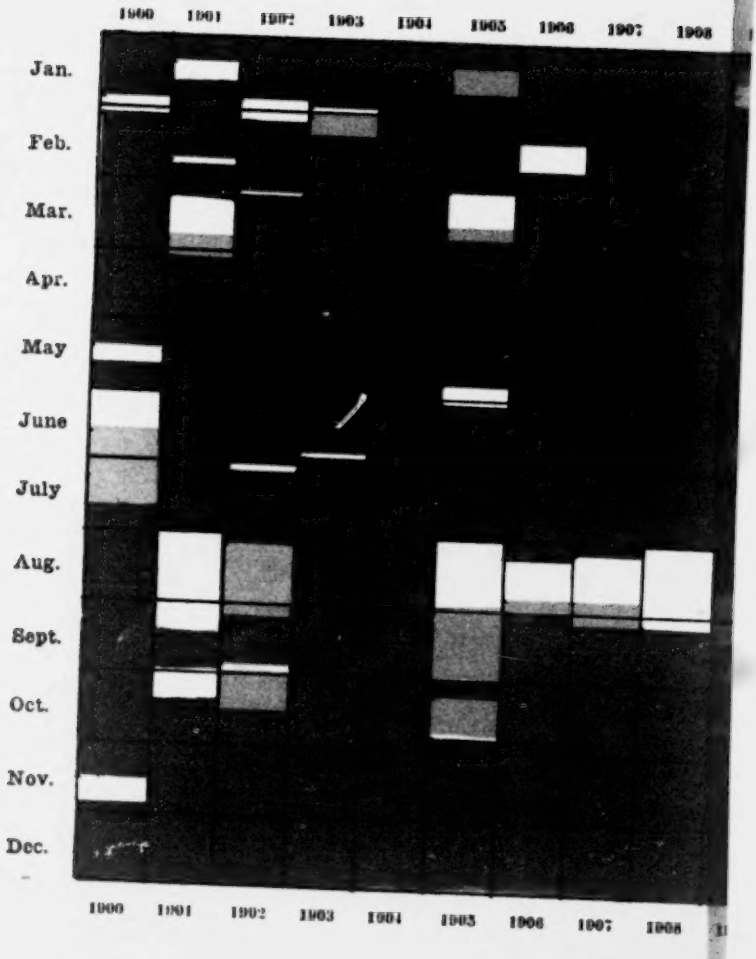
HENRY F. LONG,

Commissioner of Corporations and Taxation.

T. LUDLOW CHRYSTIE,

Special Counsel.

Dated, January 30, 1939.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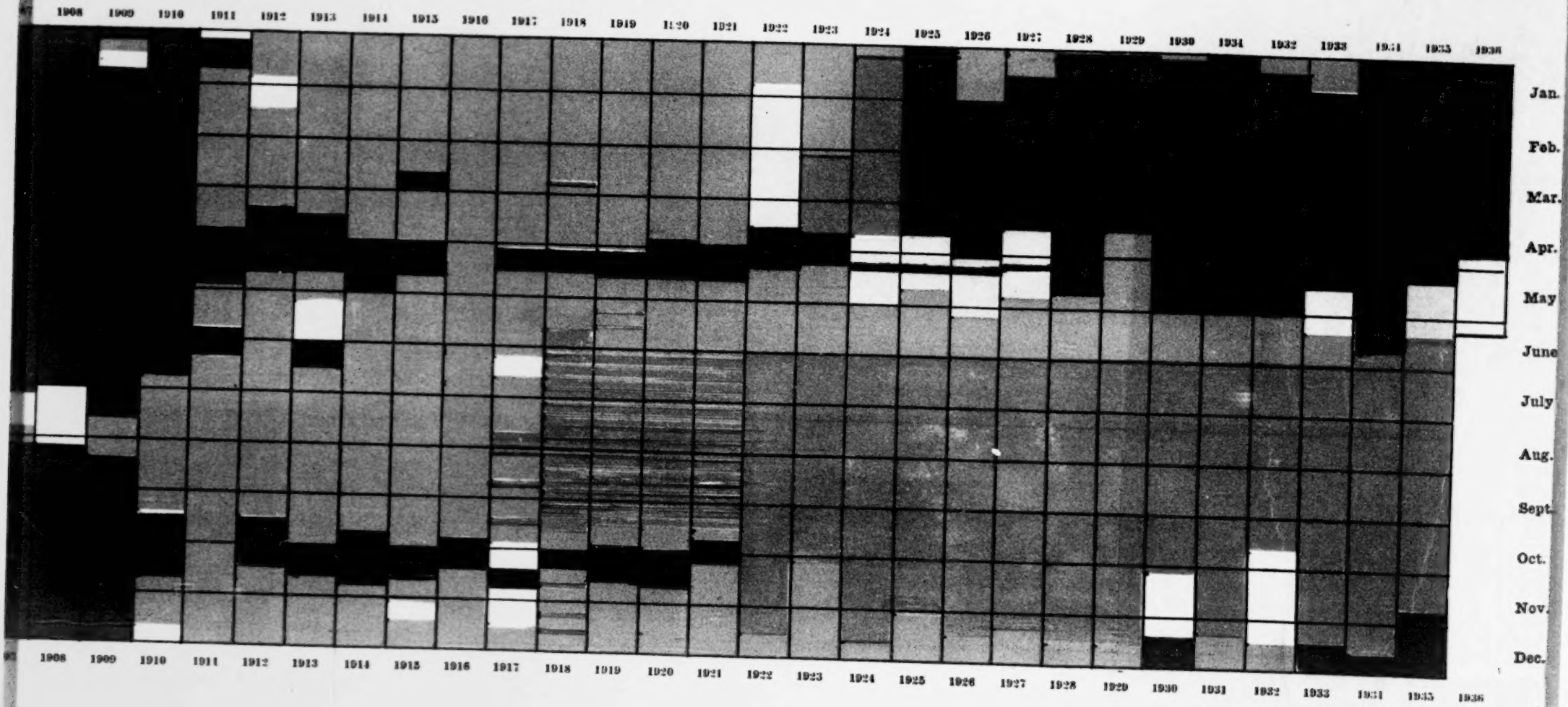
GEOGRAPHICAL CHART

OF THE LIFE OF

EDWARD H. R. GREEN

FROM JANUARY 1, 1900 TO JUNE 8, 1936



KEY

- Dallas, Terrell and neighboring cities, Texas.
- New York City.
- South Dartmouth, Mass.
- Star Island.
- Florida, at Jacksonville, Miami, Miami Beach and vicinity.
- Marlin, Texas.
- Miscellaneous (St. Louis, Mo.; Bellows Falls, Vt.; Boston, Mass.; Chicago, Ill.; San Francisco, Cal.; Asheville, N. C.; Lake Placid,